

HON. EDWARD F. SHEA

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

EDWARD COLLINS,

Plaintiff,

vs.

BISHOP, WHITE &
MARSHALL, P.S., a Washington
corporation,

Defendants.

No. CV-10-324-EFS

DEFENDANT'S RULE 56.1
STATEMENT OF FACTS

WITH ATTACHED
DECLARATION OF KRISTA L.
WHITE, WITH EXHIBITS

Defendant Bishop, White, Marshall & Weibel, P.S. ("Bishop") provides the following Statement of Material Facts in support of its Motion for Summary Judgment, pursuant to Local Rule 56.1.

1. For more than 30 years, Bishop has served the legal needs of the creditor industry, accumulating more than a century of experience in collections, foreclosure, bankruptcy, and litigation. Declaration of Krista L. White ("White decl.") at ¶ 2.¹

¹ The Declaration of Krista L. White in Support of Defendant's Motion for Summary Judgment, with attached exhibits, is attached in its entirety to this Rule 56.1 Statement of Facts for the convenience of the Court.

DEFENDANT'S RULE 56.1 STATEMENT OF
FACTS - 1
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5307206

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1 2. Bishop's attorneys provide extensive, coordinated, technologically
2 sophisticated services, with a professional support team of associates, paralegals,
3 support staff, and investigators for each of Bishop's practice areas. *Id.*

4 3. Bishop's memberships in organizations such as the National
5 Association of Retail Collection Attorneys, The Law List, the Commercial Law
6 League, The American Bankruptcy Institute, and various other Washington State
7 and American Bar Association Committees enables it to keep up to date on the
8 latest developments in Collection Law so that they may better serve its clients. *Id.*

9 4. Bishop's collections team members are well trained regarding the
10 requirements of federal and state laws governing debt collection. *Id.* at ¶ 3.

11 5. At Bishop, all claims are maintained and tracked electronically, using
12 advanced specialty software that allows a wide assortment of reporting and remote
13 auditing capabilities. *Id.*

14 6. Bishop is YGC, RMS and Princeton eCom compliant. *Id.*

15 7. Bishop maintains reasonable procedures at each step of a collection
16 action to prevent it from bringing suit against an incorrect individual. *Id.* at ¶ 4.

17 8. Bishop's procedures are provided in a variety of forms, including
18 manuals, checklists, and/or computer screen prompts. *Id.*

19 9. Bishop's employees that are responsible for carrying out various
20 functions in a collection action are instructed in how to correctly follow these
21 procedures. *Id.*

22 10. In regard to identifying the correct individual on whom to file an
23 action, Bishop has instituted an established method, and provide guidelines to its
24 employees. White decl. at ¶ 5, Ex. 1 [Procedures].
25

1 11. In this case, an employee named Caroline Waniczeck deviated from
 2 Bishop's standard procedure, which led to an unintentional error notwithstanding
 3 the maintenance of procedures reasonably adapted to avoid this specific situation.
 4 *Id.* See also Declaration of Caroline Waniczeck ("Waniczeck decl.").

5 12. On July 23, 2009, Bishop's office sent a demand letter to Edward S.
 6 Collins at 401 E Magnesium Rd. Spokane WA. *Id.* at ¶ 6, Ex. 2 [07/23/09 Letter].

7 13. On August 3, 2009, the demand letter was returned. *Id.* at ¶ 7.

8 14. On August 2, 2009, one of Bishop's employees performed research
 9 in regard to this matter and, based on this research, the address was updated in
 10 Bishop's system to reflect that Edward S. Collins lived at apartment # 113, 401 E
 11 Magnesium Rd. Spokane WA. *Id.* at ¶ 8.

12 15. A second demand letter was sent to Edward S. Collins at this updated
 13 address. *Id.*, Ex. 3 [08/02/09 Letter].

14 16. On August 31, 2009, a different employee named Caroline
 15 Waniczeck did not observe that the address had already been updated in the
 16 system, and conducted an additional automated postal trace. *Id.* at ¶ 9. See also
 17 Waniczeck declaration.

18 17. Ms. Waniczeck conducted a 411.com search, reflecting that the only
 19 address for Edward S. Collins was 2224 W Mallon Ave Spokane, WA. 99201-
 20 1658, and updated the file to reflect this address. *Id.*, Ex. 4 [Search Results].²

21 18. The method used by this employee deviated from Bishop's standard
 22 procedures. *Id.* at ¶ 9. See also Waniczeck decl.

23
 24 ² Exhibit 4 is not a printout of a contemporaneous search, as reflected in the
 25 date on the printout. However, the exhibit reflects that the results of the search
 are the same today as they were at the time.

1 19. Ms. Waniczeck should have skip-traced the address to cross
2 reference and match the Social Security # on file, as set forth in Bishop's
3 established procedures. *Id.* at ¶ 9. *See also* Ex. 1.

4 20. On September 28, 2009, when service was requested, it was
5 unfortunately sent using the Mallon address. *Id.* at ¶ 10, Ex. 5 [Affidavit of
6 Service/Complaint].

7 21. On October 8, 2009, Edward S. Collins of Spokane was served. *Id.*
8 at ¶ 11, Ex. 5.

9 22. On October 28, 2009, Bishop received a Notice of Appearance from
10 Edward S. Collins, requesting validation. *Id.* at ¶ 12, Ex. 6 [Notice of
11 Appearance].

12 23. On January 28, 2010, Bishop provided verification of the debt to
13 Edward S. Collins. *Id.* at ¶ 13, Ex. 7 [Validation Documents].

14 24. Bishop had a good-faith belief that the Edward S. Collins of Spokane
15 Washington that it had arranged to have served was the same Edward S. Collins of
16 Spokane Washington that had accrued the debt at issue. *Id.* at ¶ 14.

17 25. When Edward S. Collins of Spokane, WA continued to protest that
18 he was not the same Edward S. Collins of Spokane, WA that had accrued the debt
19 at issue, Bishop determined that it was best not to file the lawsuit against him. *Id.*
20 at ¶ 15.

21 26. No action was apparently taken in regard to Plaintiff other than the
22 service upon him of an unfiled complaint. *Id.* at ¶ 16.

23 27. To Bishop's knowledge, Plaintiff has not suffered any damage as a
24 result of the singular event of receiving this document. *Id.*

28. Prior to the filing of Collins' complaint, Bishop did not contact anyone else or make any of the information public in regard to this matter.

DATED February 1, 2011.

LEE SMART, P.S., INC.

By: s/ Marc Rosenberg
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